

## WHAT IS NEXT FOR HUMAN RIGHTS AFTER 70 YEARS? HUMAN RIGHTS 'FROM BELOW' IN 'LITTLE MOGADISHU'

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### ABSTRACT

*This paper focuses on how human rights can be relevant in the local-urban, cross-cultural and interreligious context of 'Little Mogadishu' in Kenya. By defining human rights in terms of human dignity-based human rights culture, moral-spiritual values at a grass roots level can complement international legal standards 'from above'. By doing so, we can address the question of the cross-cultural applicability of these ostensibly "universal" standards. Human dignity-based human rights start 'from below' in the estate of Eastleigh, Nairobi (Kenya). In Eastleigh or 'Little Mogadishu', on account of the many Somalis residing there, Christian and Muslim paralegals as members of human rights civil society organisations in general, and Faith-based Organisations in particular, shape the human rights culture on the ground. Vernacularisation of human rights in a local-urban context such as that of 'Little Mogadishu' is, therefore, what is next for the Universal Declaration of Human Rights after its first 70 years.*

### KEYWORDS

Human Rights Culture; Human Dignity; Kenya; Eastleigh; Interreligious Community

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## 1. INTRODUCTION

In the Foreword of the *UN 70<sup>th</sup> Anniversary Commemorative Edition: Universal Declaration of Human Rights*, former UN Secretary-General Ban Ki-moon writes: 'The Universal Declaration of Human Rights remains as relevant today as it was on the day it was adopted. I hope you will make it a part of your life'.<sup>1</sup> There is something deeply attractive about the idea underlying universal rights that any person anywhere has an inherent dignity irrespective of citizenship, gender, religion, etcetera. This idea was, indeed, as relevant in 1948 as it is in 2019. The *Vienna Declaration and Programme of Action: Adopted by the World Conference on Human Rights in Vienna on 25 June 1993*, stated that 'All human rights are universal, indivisible and interdependent and interrelated'. Yet, 'the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind'.<sup>2</sup>

This article discusses the relationship between human rights as international legal standards and their interpretation and translation in local contexts. Human rights law is widened by defining human rights in terms of culture. The term human rights culture describes a 'culture of human rights contained in declarations of human rights, hence the totality of beliefs, principles and values underlying these, and respect for that culture'.<sup>3</sup> The article focuses in particular on the underlying value of human dignity. The concept of human dignity-based human rights culture will be introduced as the linking pin between international human rights 'from above' and urban-local human rights principles and beliefs 'from below'. The article builds on arguments and concepts that navigate between human rights 'from above' and 'from below'.<sup>4</sup> This

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<sup>1</sup> Universal Declaration of Human Rights, UN 70th Anniversary Commemorative Edition (2015) <<https://www.unaa.org.au/wp-content/uploads/2015/07/UDHR-English-Version.pdf>> .

<sup>2</sup> Vienna Declaration and Programme of Action: Adopted by the World Conference on Human Rights in Vienna on 25 June 1993 <<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> .

<sup>3</sup> Johannes van der Ven, Jaco Dreyer, Hendrik Pieterse (Eds), *Is there a God of Human Rights? The Complex Relationship between Human Rights and Religion: A South African Case* (Brill Leiden/Boston 2004) 82.

<sup>4</sup> Jürgen Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41(4) *Metaphilosophy*; Bonny Ibhawoh, *Human Rights in Africa: New Approaches to African History* (Cambridge University 2018); Jim Ife, *Human Rights from Below: Achieving Rights through Community Development* (Cambridge University 2012); Makau Mutua, *Human Rights Standards, Hegemony, Law, and Politics* (New York University Press 2016); Sally Engle Merry, 'Transnational

article focuses on the dignity and rights of refugees, including un-accompanied minors in Eastleigh, a neighbourhood of Nairobi (Kenya). The social institutions that are relevant to human rights culture in terms of human rights violations at the grass roots will be analysed, rather than investigating human rights international and national conventions and treaties.

In some public discourses in the global South the Universal Declaration of Human Rights (UDHR) represents an abstract Western secular, individualistic, primarily legal document that is less relevant for the non-Western world, where spirituality and religion matter in most people's daily lives.<sup>5</sup> In African contexts, religious values also cannot be avoided in the discourse on what such a human rights culture contains. Stephen Ellis and Gerrie Ter Haar have defined religion in the context of sub-Saharan Africa 'as belief in the existence of an invisible world, distinct but not separate from the visible one, that is home to spiritual beings with effective powers over the material world'.<sup>6</sup> On an African urban-local, cross-cultural level, international human rights and religion in terms of moral-spiritual values are not always necessarily strange bedfellows.

Can the alleged "universal" legal standards of the UDHR be applicable in a cross-cultural and interreligious local setting such as Eastleigh? From the 2000s onwards, Eastleigh has attracted a number of researchers, investigating its history, its urban refugee issue, its social and economic developments and religious practices.<sup>7</sup> In Eastleigh, I conducted an empirical case study (2009-2014) in search of human rights culture 'from below'. During a mapping exercise (November 2012-February 2013), as a part of Participatory Action Research (PAR), data have been collected about issues of social justice, economic and labour rights through questionnaires and through street

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Human Rights and Local Activism: Mapping the Middle' (2006) 108(1), *AA*; Tom Zwart, 'Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach' (2012) *Human Rights Quarterly* 34.

<sup>5</sup> Abdullahi Ahmed An-Na'im, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press 2006) 126; Abamfo Atiemo, *Religion and the Inculturation of Human Rights in Ghana* (Bloomsbury 2013) 4; Philomena Njeri Mwaura, 'Civic Drive Change, Spirituality, Religion and Faith' in Alan Fowler and Kees Biekart (eds) *Civic driven Change: Citizen's Imagination in Action* (Institute of Social Studies The Hague 2008). 2; Zwart, *ibid.*, 556.

<sup>6</sup> Stephan Ellis and Gerrie Ter Haar, 'Religion and Politics: Taking African Epistemologies Seriously' (2007) 45(3) *Journal of Modern African Studies* 387.

<sup>7</sup> Neil Carrier, *Little Mogadishu: Eastleigh, Nairobi Global Somali Hub* (Hurst & Company 2016) 18.

interviews by Muslim and Christian students. We mapped the numerous social institutions, and civil society organisations, including Faith-based Organisations (FBOs).<sup>8</sup> Human rights culture appears not to 'exist' in explicit international legal terms, but one that 'happens' as a constructive process with a prominent role for the members of FBOs.

The article advances in four sections. Section 2 will highlight the academic discourse on the shades and features of human dignity, the legal and moral sides of human rights, and the role of religion. It discusses how international human rights treaties are complemented by a human rights culture, including the pre-legal, moral idea of dignity that is often framed in a religious idiom. In section 3, Kenya's socio-political developments are highlighted with regard to refugees' rights since the early 1990s. The case study of Nairobi's estate of Eastleigh will analyse its context while focusing on social institutions, including networks of Christian and Muslim paralegals and Faith-based Organisations. Section 4 contains some concluding remarks.

## 2. DIGNITY-BASED HUMAN RIGHTS CULTURE

In its preamble, the UDHR presupposes 'the inherent dignity...of all members of the human family' and speaks of the 'dignity and worth of the human person'.<sup>9</sup> The Vienna Declaration and Programme of Action (1993) reaffirms human dignity by insisting that 'all human rights derive from the dignity and worth inherent in the human person'.<sup>10</sup> The African Charter on Human and Peoples' Rights states that 'fundamental human rights stem from the attributes of human beings' upon which 'the essential rights of man' are based.<sup>11</sup> In terms of dignity and human attributes, Martha Nussbaum's exploration of the concept of dignity is helpful because of its applicability in intercultural and interreligious contexts. She has related dignity to the Aristotelian notion that there is something 'wonderful and wonder inspiring' in complex forms of human nature.

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<sup>8</sup> Christopher Peter, Joseph Wandera and Willem Jansen, *Mapping Eastleigh for Christian-Muslim Relations* (Krapf Publishers) 2013.

<sup>9</sup> See note 1.

<sup>10</sup> See note 2.

<sup>11</sup> African Charter on Human and Peoples' Rights (1991) AI.

“The idea of dignity has broad cross-cultural resonance and intuitive power. We can think of it as the idea that lies at the heart of tragic artworks, in whatever culture... For we see a human being as having worth as an end, a kind of awe-inspiring something...with strong incentives for protecting that in persons that fills us with awe”.<sup>12</sup>

This description still leaves us with the question of what the ‘awe-inspiring something’ of the human being actually means. Gerrie ter Haar has emphasized ‘the importance for all of us, in and outside the Western world, of considering the fundamental question that underlies all human rights thought: what is a human being?’<sup>13</sup> According to Ter Haar, the ‘human’ dimension of the concept is often disregarded in the human rights discourse. For many people in the world ‘the spiritual dimension is an essential part of the human condition’, which means that the religious and spiritual aspects cannot be ignored in debates about human rights and dignity.<sup>14</sup> In many African texts, for instance, ‘dignity’ is discussed in the context of the sometimes overused concept of *ubuntu*. It refers to meanings such as ‘humanness’ or ‘person’ often with communitarian and religious connotations: “I am because you are and that a person is a person because of other people. (...) Ubuntu refers to the search for the Godhead within us. If we act accordingly, we will find that everybody else is the reflection and expression of this Godhead’.<sup>15</sup>

In some non-Western contexts, such as in Kenya, respecting the autonomy of the individual other is probably not enough. African texts addressing human dignity and rights often assume that it is by virtue of having a “divine spark” that human beings have a dignity that is capable of grounding human rights.<sup>16</sup> Makau Mutua

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<sup>12</sup> Martha Nussbaum in Rutger Claassen, ‘Human Dignity in the Capability Approach’ in Marcus Düwell (et al.) *The Cambridge Handbook of Human Dignity, Interdisciplinary Perspectives* (Cambridge University Press, 2014) 245.

<sup>13</sup> Gerrie ter Haar and James Busuttill (eds) *The Freedom to do God’s Will: Religious Fundamentalism and Social Change* (Routledge 2003) 90.

<sup>14</sup> Gerrie ter Haar (2011), ‘Religion and Human Rights: Searching for Common Ground’ in Gerrie ter Haar (ed.) *Religion and Development, Ways of Transforming the World* (Hurst & Company) 305.

<sup>15</sup> Pitika Ntuli, ‘Personhood, An African Perspective’ in Thandabatu Nhlapo, Emma Arogundade, and Harry Garuba (eds), *African Culture, Human Rights and Modern Constitutionalism* (University of Cape Town 2013) xii, xiii.

<sup>16</sup> Thaddeus Metz, ‘Dignity in the Ubuntu Tradition’ in Düwell (et al.) *ibid.*, 312.

refers to human beings in terms of dignity, 'inner worth' and the philosophy of ubuntu:

"Human dignity, unlike human rights, is not just a language of legal rights, but a concept that encompasses empathy, hospitality, and the inner worth of human beings. It is akin to the philosophy of *ubuntu*, a term from Bantu languages of Africa which refers to human-ness. In this context, new social movements for new and emerging rights have arisen".<sup>17</sup>

Mutua states that 'social movements for new and emerging rights' are needed in the light of the colonial subtext, and in terms of his 'savage-victims-saviour' (SVS) metaphor, that is still very much alive in the contemporary human rights movement.<sup>18</sup> He has therefore advocated the genuine cross-contamination of cultures to create 'a new multicultural human rights corpus' (...) '[T]he imposition of the current dogma of human rights on non-European societies flies in the face of conceptions of human dignity, and rejects the contributions of other cultures in efforts to create a universal corpus of human rights'.<sup>19</sup> Mutua, however, has observed a change in 'the given credence to human rights as a historical continuum of the civilizing mission of Eurocentrism'. He states:

"To be sure, 2015 is not 1948. A lot has changed in the world of human rights. The normative character of the human rights corpus is now slowly being transformed into a more inclusive dogma. But this transformation is not deep enough. For example, as a secular enlightenment project, the human rights movement still does not know how to relate to Islamic societies, that is, how to understand and work with their views about the relationship between state and religion or their understanding of gender (...) Can this change come from the top, that is, the West, where the traditional human rights movement has its most ardent supporters and defenders? Or will it be initiated from below, the South, where the grassroots, on-the-ground work is being done?"<sup>20</sup>

Thus, in order to reach such 'a more inclusive dogma' from below, human rights should not only be framed in a legal rights theory, but also initiated 'from below' in local practices. Van der Ven has defined human rights in terms of human rights culture, containing human rights documents, including the totality of beliefs,

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<sup>17</sup> Mutua (2016) 140.

<sup>18</sup> Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia Press 2002) 27.

<sup>19</sup> *Ibid.*, 8.

<sup>20</sup> Mutua (2016) 179, 180.

principles and values underlying these, and respect for that culture.<sup>21</sup> Human rights culture does respect the UDHR and all its subsequent international covenants and treaties. However, in this definition the scope of human rights in the sense of a strictly legal instrument is widened by relating it to its underlying values. By broadening human rights to include human rights culture, the risk of ‘juridification’<sup>22</sup> of human rights is avoided. Or, in the words of Annelise Riles, human rights have to be freed from the ‘iron cage of legal instrumentalism’.<sup>23</sup> According to Johannes Morsink, ‘We must follow the lead of the Declaration’s drafters and liberate the idea of human rights from the realm of the political and juridical, which is where contemporary theorists have imprisoned it’.<sup>24</sup> At the start of the drafting of the UDHR in 1945, the Catholic philosopher Jacques Maritain had claimed that the composers, who were from very diverse cultural and religious backgrounds, ‘agree about rights but on the condition that no one asks why’.<sup>25</sup> Habermas rephrases Maritain’s words in terms of human dignity: ‘[e]veryone could agree that human dignity was central, but not why and how’.<sup>26</sup>

According to Van der Ven, the UDHR as a basic text on human rights is a pragmatic text, which is not foundational but deliberately leaves the establishment of such a foundation open. The 1948 declaration, for instance, contains no reference to God whatsoever, nor to natural law or natural rights, nor to any worldview or even philosophy. The UDHR is a “foundation-open” text (a *begründungsoffen* text).<sup>27</sup> It is a document open to a multiplicity of foundations, including religious ones. The UDHR is characterised by a pragmatic common denominator: to reach agreement so as to do what needed to be done.<sup>28</sup> According to Michael Ignatieff, there is a deliberative

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<sup>21</sup> Van der Ven (et al.) (2004) 82.

<sup>22</sup> Gerrie ter Haar, *Religion and Development, Ways of Transforming the World* (London Hurts & Company 2011) 305.

<sup>23</sup> Annelise Riles, ‘Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage’ (2006) 108(1) AI 52.

<sup>24</sup> Johannes Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Pennsylvania Press 2009) 53.

<sup>25</sup> John Witte, ‘Religious Sources and Dimensions of Rights’ in Govert Buijs (et al.) in *Risky Liaisons, Democracy and Religion: Reflections and Case Studies* (VU University Press 2012) 346.

<sup>26</sup> Habermas (2010) 467.

<sup>27</sup> Van der Ven (et al.) (2004) 185.

<sup>28</sup> Johannes van der Ven, *Human Rights or Religious Rules? Empirical Research in Religion and Human Rights* (1) (Brill Leiden 2010) 166.

silence at the heart of human rights culture: 'Pragmatic silence on ultimate questions has made it easier for a global human rights culture to emerge'.<sup>29</sup> Cross-cultural communication about what human rights mean thus, already started with the drafting of the UDHR project in 1945 and continues to be an essential part of the ongoing universalising process.

Although the UDHR can be considered as positive law, human rights culture also includes the moral idea of human dignity. Arguably human dignity precedes such legal document by many centuries and can be found in distinct cultures and religions. In the context of Africa, the moral idea of human dignity is often framed in a religious language. In the context of Ghana, for instance, Kwame Gyekye stated:

"The general African belief that human beings are created by God – that they are children of God – most probably lies at the basis of values attached to humanity and the unity by African people. And, their having a speck of the divine nature (i.e. soul) in them constitutes all human beings into one universal family of human kind".<sup>30</sup>

In the case study of Eastleigh, I questioned whether the concept of human rights and dignity can travel in cross-cultural and interreligious practices of Christian and Muslim communities. Abdullahi Ahmed An-Na'im, for instance, contends 'that it is only when we make religion and human rights synonymous in the thinking, feeling, motivation and action of given constituencies that we can have a global human rights culture'.<sup>31</sup> An-Na'im's view that religious believers must be understood in their own terms if religion is to become a source of inspiration rather than an obstacle to promoting a culture of human rights, applies probably to all religious traditions. The Ghanaian scholar of religion, Abamfo Atiemo also searches for 'a justifiable basis for universal human rights in local cultures'.<sup>32</sup> He describes human rights as 'dream values' that need to be 'inculturated' in various local cultures.<sup>33</sup> Through a dialectical relationship between human rights values and local cultures 'a modest spread of human rights culture' has been facilitated.<sup>34</sup> In the South African context, Bonny Ibhawoh refers to 'a uniquely South African human rights culture founded on

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<sup>29</sup> Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University 2009) 95.

<sup>30</sup> Kwame Gyekye, *African Cultural Values: An Introduction* (Sankofa Publishing Company, 2002) 24.

<sup>31</sup> Abdullahi Ahmed An-Na'im in Ter Haar (ed.) (2011) 299, 300.

<sup>32</sup> Atiemo (2013) 30.

<sup>33</sup> *Ibid.*, 53.

<sup>34</sup> *Ibid.*, 198, 199.



universal and local cultural norms'.<sup>35</sup> Social and political developments in the post-apartheid era have included efforts to localise and indigenise human rights norms. Ibhawoh describes the process by which human rights norms become grounded in local contexts as 'the notion of vernacularizing human rights.'<sup>36</sup>

Benedict Anderson developed this concept of 'vernacularisation' in order to explain the process of deviation from Latin language in local European languages during the 19<sup>th</sup> Century, and as part of a liberating movement in European regions.<sup>37</sup> Sally Engle Merry applied the concept of vernacularisation in the context of human rights as 'an analytical framework for studying the localization of human rights...As ideas from transnational sources travel to small communities, they are typically vernacularized, or adapted to local institutions and meanings'.<sup>38</sup> According to Merry,

'Human rights language is similarly extracted from the universal and adapted to national and local communities....A key dimension of the process of vernacularization is the people of the middle: those who translate the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violation.'<sup>39</sup>

Intermediaries such as NGO participants, community leaders and human rights activists, according to Merry, 'play a critical role in translating ideas from the global arena down and from local arenas up'.<sup>40</sup>

How can global international norms be translated 'from local arenas up', while tying these norms to urban-local contexts? In what way can international human rights be 'vernacularised', translated and interpreted, in the moral-spiritual, cross-cultural context of Eastleigh? Prominent human rights scholar Tom Zwart has developed the idea of the 'receptor approach', in order to bridge international human rights standards and local cultural diversity.<sup>41</sup> The receptor approach 'assumes that

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<sup>35</sup> Ibhawoh (2018) 231.

<sup>36</sup> Ibid., 225.

<sup>37</sup> Benedict Anderson, 'Imagined Communities: Reflections on the Origin and Spread of Nationalism' (Verso, 1991); Obinna Okafor and Eddie Krooneman, Vernacularization of Universal Human Rights, A Step towards realizing Human Rights in the Local Setting (Wageningen University, 2011).

<sup>38</sup> Merry (2006) 39.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., 38.

<sup>41</sup> Zwart (2012) 548.

the culture and the social institutions of Eastern and Southern countries can actually contribute to meeting international human rights obligations'.<sup>42</sup> Human rights obligations that countries have ratified, may not compromise such obligations unilaterally by invoking local cultural values,<sup>43</sup> but should implement them 'diligently and in good faith'.<sup>44</sup> Furthermore, according to Zwart, 'states are encouraged to rely as much as possible on their own culture and social institutions at their implementation stage to enable them to fulfil their treaty obligations fully'.<sup>45</sup> Religion, family, law, self-help, and education are examples of such social institutions.

The receptor approach, assumes that international human rights law does not have a monopoly, but every value system has 'its own inner logic and is aimed at its own conceptualization of fairness and human dignity'.<sup>46</sup> The receptor approach, therefore, provides 'an ethnography of social institutions that are in place in any given society to achieve fairness and human dignity'.<sup>47</sup> According to Zwart, 'in many African societies, which are communal in nature, substantial cultural texture is provided by non-legal social institutions like community, duties, and religion'.<sup>48</sup> Whereas western scholars often tend to overlook or avoid religion, 'in Africa, religion serves as an important receptor for human rights'.<sup>49</sup> To summarise the aim of the receptor approach, according to Zwart:

"Many African cultures have always had a rich indigenous set of human rights practices, based on notions like family, religion and doing good to others. Where they exist, instead of ignoring these local notions of human rights, or replacing them by Western centred concepts, international human rights experts should identify them, incorporate them and build on them."<sup>50</sup>

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<sup>42</sup> Zwart (2012) 547.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., 553.

<sup>47</sup> Ibid., 554.

<sup>48</sup> Ibid., 549.

<sup>49</sup> Ibid., 556.

<sup>50</sup> Tom Zwart, 'Relying on Africa's Strengths in the Area of Human Rights: The Receptor Approach' in Thandabatu Nhlapo, Emma Arogundade, and Harry Garuba (eds), *African Culture, Human Rights and Modern Constitutionalism* (University of Cape Town 2013) 13.

In the light of this study on human dignity-based human rights culture, the receptor approach provides an ethnography of social institutions such as community and religion in places like Eastleigh, and in order to achieve human dignity. It gives 'cultural texture' to non-legal social institutions like Eastleigh's civil society, including its Faith-based Organisations. Without denying international and national legal obligations and treaties, members of human rights organisations in Eastleigh construct a human rights culture that is built on local notions of human dignity in terms of *ubuntu*, community and religion. The receptor approach gives pride of place to religion as a receptor for human rights. It thus acknowledges home-grown local values, including dignity, community and religion, underlying the legal, international human rights treaties.

Furthermore, Jürgen Habermas has described human rights as 'Janus-faced': one side facing morality, the other facing law.<sup>51</sup> By connecting the concept of human rights with human dignity, Habermas has kept sight of the moral side of human rights law. Historically, Habermas argues, violations of human dignity in the real world have always been a motivating source for devising a constitutional project.<sup>52</sup> The notion of human dignity therefore serves as a 'linking pin' or 'conceptual hinge' that makes possible the 'improbable synthesis' between morality and positive law.<sup>53</sup> In Habermas's words:

"I present some legal reasons in support of the claim that 'human dignity' is not merely a classificatory expression, an empty placeholder, as it were, that lumps a multiplicity of different phenomena together but the moral 'source' from which all the basic rights derive their meaning (...) The origin of human rights in the moral notion of human dignity explains the explosive political force of a concrete utopia."<sup>54</sup>

Local contexts matter for human rights culture. Habermas has stressed 'the catalytic role' of human rights as the modern idea of what human rights actually mean in distinct contexts.<sup>55</sup> According to him, specific violations of human dignity – such as those experienced by marginalised social classes, discriminated minorities, illegal immigrants, and asylum-seekers – make the meaning of human dignity apparent and

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<sup>51</sup> Habermas (2010) 470.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid. See also Jeffrey Flynn, 'Reframing the Intercultural Dialogue on Human Rights, A Philosophical Approach' (Routledge 2014) 99-109.

<sup>54</sup> Habermas, *ibid.*

<sup>55</sup> Flynn (2014) 105.

therefore manifest the need for specific rights.<sup>56</sup> The groups mentioned by Habermas are all represented in the specific society of Eastleigh, to be introduced shortly. He argues that '[i]n the light of such specific challenges, different aspects of the meaning of human dignity emerge from the plethora of experiences of what it means to be humiliated and be deeply hurt'.<sup>57</sup>

In Habermas's view, the concept of human dignity encompasses a genuinely constructive bottom-up process. Human dignity is not an ultimate value from which the concept of human rights is derived, but a key concept for understanding the dynamic process of social struggles through which the moral content of human rights is generated and continues to expand. Habermas, therefore, uses the concept of dignity in a way that connects it with specific struggles for human rights. What human rights share with other moral norms is their rather abstract character and thus the fact that they need to be interpreted in specific cases and local contexts. As Michael Ignatieff has vigorously stated, '[h]uman rights has gone global by going local, empowering the powerless, giving voice to the voiceless'.<sup>58</sup>

In the same vein, Australian scholar Jim Ife speaks of the culture of human rights. According to him, human rights are contextual, dynamic and firmly grounded in lived experience. Human rights culture involves not just the passing of legislation, but has the potential for spreading the responsibility for human rights in the society as a whole 'and for giving more people a sense of agency when it comes to human rights protection and realisation'.<sup>59</sup> In Ife's interpretation, human right culture is coming 'from below' as opposed to verdicts of international human rights courts and other related institutions 'from above'. Whereas international human rights treaties can offer the necessary legal framework, human rights culture actually becomes relevant in concrete cases of violations, such as in Eastleigh. In the words of Ibhawoh, 'Securing local legitimacy is therefore crucial to prospects of human rights promotion and protection in Africa. Human right norms are likely to be more effective and relevant when they are intelligible in local idiom and vernacular'.<sup>60</sup> Before I introduce the local shades and features of human rights culture in Eastleigh, Nairobi, I describe

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<sup>56</sup> Habermas (2010) 467.

<sup>57</sup> Habermas, *ibid.*, 467, 468.

<sup>58</sup> Ignatieff (2009) 70.

<sup>59</sup> Ife (2012) 76, 77.

<sup>60</sup> Ibhawoh (2018) 234.

the wider context of Kenya in the light of its commitment to international and national human rights standards.

### 3. HUMAN RIGHTS CULTURE IN LITTLE MOGADISHU

#### 3.1. CONTEXTUALISING REFUGEE ISSUES IN RECENT KENYAN HISTORY

The year 1991 was crucial for Kenya's internal political system. Section 2A of the Constitution, which prohibited a multiparty state, was repealed, enabling other socio-political parties to participate in public discourse. The rise of pro-change movements was facilitated by emergent economic and geopolitical realities as a result of the end of the Cold War. Human rights organisations, religious bodies and other civil society organisations now openly rebuked the government for human rights abuses.<sup>61</sup> According to Mutua, it was 'not until the 1990s that civil society, and in particular human rights NGOs, became a serious feature of the political landscape in East Africa (...) The whittling away of absolute state power (...) created the political space necessary for the establishment of human rights groups'.<sup>62</sup> In the early stages of Kenya's civil society in the 1990s, 'human rights groups and governance groups, including faith-based organisations played the most prominent role in expanding the democratic space'.<sup>63</sup> During the same period, Kenyan authorities appeared to be alarmed by the scale of the influx of immigrants from the surrounding countries.

The year 1991, in particular, was a watershed in Kenya's approach to refugees. The end of the Cold War had caused political upheaval in the region.<sup>64</sup> Political turmoil in the (as yet undivided) Sudan, Ethiopia and later Burundi, Rwanda and the Democratic Republic of Congo (DRC) caused many people to flee to neighbouring Kenya.<sup>65</sup> Before 1989, refugees came by their thousands, after 1991 they came by their

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<sup>61</sup> Arye Oded, *Islam & Politics in Kenya* (Lynn Rienne Publishers, London 2000) 73.

<sup>62</sup> Makau Mutua, *Human Rights NGOs in East Africa: Political and Normative Tensions* (Fountain Publishers Kampala 2009) 18.

<sup>63</sup> Wanjiku Miano in Makau, *ibid.*, 221.

<sup>64</sup> Idil Lambo, 'In the shelter of each other: notions of home and belonging amongst Somali Refugees in Nairobi', (UNHCR, *New Issues in Refugee Research*, May 2012) 3.

<sup>65</sup> Sara Pavanello, Samir Elhawary and Sara Pantuliano, 'Hidden and exposed: Urban refugees in Nairobi, Kenya' (HPG Working Paper, March 2010) 13.

hundreds of thousands, mostly originating from the Horn of Africa.<sup>66</sup> These numbers were beyond the government's capacity to accommodate refugees properly. Kenya even seemed at risk of collapsing under the huge burden. In sum, '[I]f the pre-1991 refugee regime in Kenya can be characterized as generous and hospitable, with emphasis on local integration, the post-1991 regime has been inhospitable, characterized by growing levels of xenophobia, denial of basic refugee rights and few opportunities for local integration'.<sup>67</sup>

Kenya has become a signatory to conventions and treaties dealing with refugees and their protection. In 2006, the government of Kenya passed the Kenyan Refugee Act, implementing the 1951 United Nations Convention Related to the Status of Refugees, the 1967 Protocol, the 1969 OAU Convention, governing the Specific Aspects of Refugee Problems in Africa, and the Children's Act (2001). The Kenyan Refugee Act (2006)<sup>68</sup> enshrines the state's international legal obligations regarding asylum seekers and refugees, including un-accompanied minors. The new Kenyan constitution of 2010 includes key provisions of the UDHR and is a foundational document for the protection of rights. International law as well as Kenyan criminal law, prohibit arbitrary detention of refugees. According to the International Covenant on Civil and Political Rights (ICCPR, art. 9), 'detention before trial shall be the exception rather than the rule'. According to the constitution, all people who find themselves on Kenyan territory, including refugees and asylum seekers, without discrimination on the grounds of national origin or other status, are entitled to:

1. protection of their physical integrity, freedom from all forms of inhuman and degrading treatment or punishment;
2. freedom from arbitrary arrest and detention; and,
3. protection from arbitrary interference with property and privacy.<sup>69</sup>

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<sup>66</sup> Jennifer Hyndman and Bo Victor Nyland (1998) 10 (1,2) 'UNHCR and the Status of Prima Facie Refugees in Kenya' in *International Journal of Refugee Law* 29.

<sup>67</sup> Elizabeth Campbell (2005) 'Formalizing the Informal Economy: Somali Refugee and Migrant Trade Networks in Nairobi' *GCIM* 4, 5.

<sup>68</sup> Pavanello (2010) 15; 'Information for Refugees and Asylum-seekers in Nairobi' (UNHCR, March 2012) 40- 43; 'Refugees' Handbook 2013' (Kituo cha Sheria) 11-25.

<sup>69</sup> 'The Constitution of Kenya 2010', Kituo Cha Sheria (2013) 40, 41.

In the light of these national and international covenants and treaties, Eastleigh at first sight seems to demonstrate the bankruptcy of human rights legislation in Kenya. This is mostly regarding recent human rights violations arising from police and military forces in countering terrorism<sup>70</sup> on the one hand, and the plight of refugees on the other. Arguably, the statements of John Wagacha and John Guiney stand, in that the,

“dearth of information and research about urban refugees and the inadequacy of the forums through which these refugees can voice their problems and concerns create a dangerous scenario for them. They frequently face insecurity and human rights abuse while living with their basic needs unmet”.<sup>71</sup>

How can Kenya as a signatory of international human rights treaties, translate the human rights imperative appropriately into a local-urban context of Eastleigh and what possible role can civil societal institutions play?

### 3.2. CASE STUDY OF EASTLEIGH

Eastleigh, with its approximately 300,000 inhabitants<sup>72</sup> is located east of the city. Eastleigh is now one of the biggest hubs in East Africa, with more than 6.000 shops, in over 40 shopping malls in addition to hundreds of small businesses of hawkers. Many of the kiosks and malls, decorated with Islamic religious expressions and names, are owned and operated primarily by Somalis. Eastleigh or *Islia* as Somalis themselves refer to it, obtained the nickname ‘Little Mogadishu’ because it is a dislocated proxy seat of the government of Somalia, and due to the number of Kenyan Somalis and Somalis living in the area.<sup>73</sup> However, Eastleigh is more diverse as its nickname Little Mogadishu suggests. Islam is a factor here as it is in Somalia, but also Christian organisations and churches are scattered far and wide over Eastleigh. Meru and Kikuyu Kenyans residing there are predominantly Christian as are people coming from countries such as South-Sudan, Ethiopia and the Great Lake area. Though the name Little Mogadishu seems misleading and even dangerous, as it denies Eastleigh’s

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<sup>70</sup> Human Rights Watch , (May 2013) ‘You Are All Terrorists, Kenyan Police Abuse of Refugees in Nairobi’.

<sup>71</sup> John Wagacha and John Guiney, ‘The Plight of Urban Refugees in Nairobi’ in David Hollenbach in *Refugee Rights, Ethics, Advocacy and Africa* (Georgetown University Press 2008) 94, 95.

<sup>72</sup> Cf. Carrier, *ibid.*, 54.

<sup>73</sup> *Ibid.*, 16.

super-diverse ethnoscape, in some ways it is an appropriate name, since economically and socially Eastleigh does function as 'a Little Mogadishu', subsuming much activity that would previously have been centred in Mogadishu itself.

Eastleigh has been transformed in recent history by distinct waves of immigration from all Kenya's surrounding countries, in particular from Somalia. The neighbourhood has faced several stages in its recent migrant history. Already in 1920, under the protection of the colonial power, Somalis started their businesses alongside the Asians and Europeans in Nairobi.<sup>74</sup> During the 1940s Kenyan families were allowed to join their men, husbands and fathers in Eastleigh who had previously worked there as bachelors for the colonial power.<sup>75</sup> At the independence of Kenya in 1963, segregation of residential space along ethnic lines was abolished and Kenyans from villages and rural areas moved to Eastleigh and settled there.<sup>76</sup> In 1991 the Somali President Siad Barre was overthrown.<sup>77</sup> Civil war broke out in this country in the Horn of Africa. Wealthy Somalis as well as refugees started fleeing to the 'green pastures'<sup>78</sup> of Eastleigh as a commercial hub, a residential area or transit zone. The former Dutch liberal parliamentarian of Somali decent Ayaan Hirsi Ali, for instance, lived in Eastleigh while she was in transition from Mogadishu to The Netherlands,<sup>79</sup> before ultimately moving to the USA. Thus, since the 1990s, for the third time, Eastleigh has become an immigrant quarter and a place of transition.

In October 2011, for the first time since its independence, Kenya intervened in a neighbouring country, launching an attack on the *al-qa'ida*-linked *al-shabāb* movement, under the name *Linda Nchi* ('Defend the Nation', in Ki-Swahili).<sup>80</sup> Besides being a place of refuge and relatively safe haven for refugees after the 1991 Somali war, Eastleigh became a hiding place for this movement. Assistant Minister of Internal Security, Orwa Ojode, linked the attacks to Eastleigh by describing *al-shabāb* 'as [a] big animal with the tail in Somalia and the head of the animal in Eastleigh'.<sup>81</sup> After the attack by

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<sup>74</sup> Ibid., 39.

<sup>75</sup> Ibid., 44.

<sup>76</sup> Ibid., 27.

<sup>77</sup> Anna Jacobsen, *Making Moral Worlds: Individual and Social Processes of Meaning-Making in a Somali Diaspora* (Washington University 2011) 61.

<sup>78</sup> Carrier (2016) 135.

<sup>79</sup> Ayaan Hirsi Ali, *Infidel, My Life* (Cox & Wyman 2008) 62, 146.

<sup>80</sup> HRW (May 2013).

<sup>81</sup> Carrier (2016) 227.



*al-shabāb* at Westgate shopping mall, in September 2013, the Somali community in Eastleigh was collectively punished for adhering to a religion from which they derive dignity in difficult times.<sup>82</sup> After a major operation by Kenyan authorities called *Usalama Watch* (Ki-Swahili 'Restore Peace'), which started in April 2014, the estate has come under heavy surveillance in the context of 'Kenya's war on terror'.<sup>83</sup> As a consequence, the inhabitants of Eastleigh, primarily its most vulnerable refugee population, were paying a high price in terms of infringements of their human dignity for atrocities committed by terrorists. A report by Human Rights Watch (HRW, May 2013) entitled "You Are All Terrorists", Kenyan Police Abuse of Refugees in Nairobi' has recorded details of human rights abuses carried out during this raid, some of them 'amounting to torture'.<sup>84</sup>

Here, in Habermas's terminology, the meaning of human dignity emerges from experiences of what it means to be humiliated and can provide the motivating source for a constitutional project. The pragmatic common denominator of human rights cross-cultural activism emerges from imagined empathy for the angst the suffering residents of Eastleigh live in. In light of Merry's concept of the vernacularisation, human rights organisations have to translate the discourses and practices from the arena of international law and legal institutions to the specific situation of suffering and violation, such as in Eastleigh. In terms of the receptor approach, the next section discusses whether Eastleigh's social institutions, including FBOs can bridge the divide between international human rights treaties and local cultural diversity.

### 3.3. HUMAN DIGNITY-BASED HUMAN RIGHTS CULTURE IN 'LITTLE MOGADISHU'

In the case study of Eastleigh, there is a divide between the ratification of formal international and national legal treaties on the one hand, and incidents of human rights violations on the ground on the other hand. Eastleigh's civil society, including numerous Non-Governmental Organisations (NGOs), Community-Based Organisations (CBOs) and Faith-Based Organisations (FBOs), promotes human rights dignity without trying to address legal structures in the first place. To the people of Eastleigh, official legal structures and institutions appear untrustworthy and time-

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<sup>82</sup> Ibrahim Abditifal, Kenya's 'Little Mogadishu' Fears Backlash <<http://www.bbc.co.uk/go/em/fr/-/news/world-africa-24222756>> .

<sup>83</sup> Carrier (2016) 20.

<sup>84</sup> HRW (2013) 2.

consuming in their proceedings. In some cases, Eastleigh's residents cannot afford to wait for legal specialists to solve human rights violations. The plight of residents in Eastleigh makes human rights practitioners eager to look for alternatives to the formal justice system. The result of this odd situation is an omnipresent network of *pro bono* trained voluntary paralegals that circumvents the official legal route. Especially the paralegals' pragmatic approach to human rights is based on moral-spiritual claims rather than on constitutional or international legal standards.

The organisation Kituo cha Sheria, Centre for Legal Empowerment (Kituo), for instance, is involved in the training of paralegals in Eastleigh.

"Kituo cha Sheria is a human rights Non Governmental Organization which was established in 1973 with the view to empowering the poor and marginalized people to effectively access justice and realize their human and peoples' rights. Kituo offers its services through advocacy, networking, lobbying, legal aid, legal education, representation and research".<sup>85</sup>

Kituo received serious resistance from the government when it began formulating a policy on paralegal training and practices, but later the government changed its position to one of appreciation.<sup>86</sup> Kituo sponsors forty Community Justice Centres under the umbrella of the Kamakunji Community-based Organisations Network, a network of paralegals that solve legal issues locally.<sup>87</sup> Kituo also set up an Urban Refugee Intervention Programme (URIP) office to assist refugees in Eastleigh and announced its presence on local radio stations, in the mosques, and during public meetings, *barazas*, in Eastleigh.<sup>88</sup> In 2007, Kituo in partnership with the UNHCR, opened the Forced Migration Programme to exclusively serve refugees and asylum seekers.<sup>89</sup> In 2011, Kituo embarked on a new project called Nairobi Urban Refugee Rights Integration Activities (NURRIA).<sup>90</sup> NURRIA is a project of Kituo in cooperation with the International Rescue Committee (IRC). IRC was founded in 1933, originally

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<sup>85</sup> Kituo Cha Sheria, *Refugees' Handbook* 2013, 1; see also Mutua (2009) 19; HRW (2013) 51.

<sup>86</sup> Bard Andreassen and Tiberius Barasa, 'Kenya, Civic Action from Confrontation to Collaboration?' in Bard Andreasse and Gordon Crawford (eds), *Human Rights, Power and Civic Action, Comparative Analyses for Human Rights in Developing Countries* (Routledge 2012) 64.

<sup>87</sup> *Ibid.*, 80.

<sup>88</sup> *Ibid.*, 68, 69.

<sup>89</sup> Kituo Cha Sheria 2013, iii.

<sup>90</sup> *Ibid.*

based on the idea of physicist, humanitarian, and refugee Albert Einstein,<sup>91</sup> it is in this context ‘committed to freedom, human dignity and self-reliance’<sup>92</sup> of refugees and vulnerable Kenyans in Eastleigh.

When in December 2012, the Department of Refugees Affairs (DRA) for reasons of security ordered all urban refugees back to the refugee camps, Kituo came to defend Eastleigh’s refugees.<sup>93</sup> In January 2013, Kituo successfully filed a petition based on ‘Kenya’s obligations under the 1951 Refugee Convention, the 1969 Refugee Convention of the Organisation of African Unity (now the African Union), and freedom of movement rights under Kenya’s 2006 Refugee Act’, requesting the High Court of Kenya to quash the directive that had implemented the forced relocation plan.<sup>94</sup> In the light of the Kenyan Constitution (2010), the judge averred that the DRA directive,

“threatens the right and fundamental freedoms of the petitioners and other refugees residing in urban areas and is a violation of the freedom of movement under Article 39, the right to dignity under Article 28 and the right to fair and administrative action under Article 47 (1), and violates the State’s responsibility towards persons in vulnerable situations to Article 21 (3)”.<sup>95</sup>

Such concepts as ‘the right to dignity’ and ‘the State’s responsibility towards persons in vulnerable situations’, found within the court judgment, strikingly demonstrates a dignity-based human rights culture. It further embodies Habermas’ ‘linking pin’, for the purposes of the residents of Eastleigh. By using the language of dignity, it was able to connect human rights as international law to the local experiences of Eastleigh’s residents, who experienced humiliation and for them moral violations.

There are a number of social institutions, through which the local human dignity-based human rights culture in Eastleigh, can be “mapped”, as suggested by the receptor approach. Eastleigh’s Fellowship Centre, for instance, is a CBO that operates locally within the wider USA-based Mennonite Central Committee (MCC)’s

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<sup>91</sup> ‘Albert Einstein and the Birth of the International Rescue Committee’ <<https://www.rescue.org/article/albert-einstein-and-the-birth-international-rescue-committee>>

<sup>92</sup> Leaflet IRC, found at IRC office in Eastleigh, 13 September 2013.

<sup>93</sup> Carrier (2016) 230.

<sup>94</sup> HRW (2013) 51.

<sup>95</sup> Carrier, 230.

'holistic approach to basic rights'.<sup>96</sup> It works with a human rights legal approach, but focuses on 'the grass roots development of greater social justice, human dignity, and local ownership'.<sup>97</sup> Given the significance of religion to the majority of its inhabitants, there have been Muslim and Christian paralegals and FBO's working within the community, long before the first non-governmental organisations entered this community. FBOs, present in the veins of Eastleigh society, bring human rights into the homes of families and at places of worship. During the year, and especially at the occasion of religious rituals and festivals, the less fortunate in Eastleigh are provided with basic amenities such as food, drugs and primal education. In the midst of Eastleigh's often poor socio-economic circumstances, such charity, places of shelters at the religious premises, and self-help groups, demonstrates that FBO's offer solace and meet the basic human needs of refugees and migrants in transition.

As members of the FBOs, Muslim and Christian paralegals bear witness to their respective religions when counterbalancing frequent violations of human dignity on the ground. Pro bono trained Muslim and Christian paralegals assist members of their respective constituencies of the Mosque or the Church, and of the affiliated organisations, by preventing and resolving their most pressing justice problems. Consider, for instance, Muslim Family Law-related issues such as marriage, divorce, and inheritance, in such cases the paralegals referred to Islamic Law (shari'ah). Furthermore, Muslim refugee paralegals often grounded their human rights praxis on the traditions of the Prophet Mohammad's life (sira), whereas Christian paralegals would base their commitment to human dignity on Catholic social teachings, and on general Christian ethics, using Biblical images such as 'the Good Samaritan'.

In this regard, the receptor approach is particularly promising as it focuses on social institutions like religion, community, and law, that are in place in Eastleigh, in order to achieve human dignity. According to Zwart, 'to map the human rights performance of a particular state, ethnographic research will be more important than legal analysis. The receptor approach relies on social research methods, like consensus analysis, to identify socio-cultural arrangements that promote and protect human rights'.<sup>98</sup> In the ethnographic case study of Eastleigh, Muslim and Christian paralegals

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<sup>96</sup> Susan Dicklitch and Herbert Rice (2004) 14(5) 'The Mennonite Central Committee (MCC) and Faith-Based NGO Aid to Africa' in *Development in Practice* 660.

<sup>97</sup> Ibid.

<sup>98</sup> Zwart (2012) 557.

as members of social institutions, including FBOs, often appear to have reached a consensus to use the local vernacular of their respective moral-spiritual sources in order to further human dignity-based human rights culture.

Given that, as Ife proposes, human rights ‘from below’ is a human rights culture firmly grounded in lived experience,<sup>99</sup> Mama Fatuma Goodwill Children’s Home, an orphanage, provides an exceptional example of this. In the 1960s, this former *madrassah* (Arab. ‘school’) became a home. Orphaned children from Kenya’s neighbouring countries are referred to the home as ‘unaccompanied minors’ by the United Nations High Commissioner for Refugees (UNHCR).<sup>100</sup> The orphans are protected under the human rights-based, Kenyan’s Children’s Act of 2001, a national law regulating the organisations policy, in matters of admittance, internal governance, services and external relations.<sup>101</sup> The Home respects children without regard to their religious and cultural backgrounds. It works in the spirit of the United Nations Convention of the Rights of the Child (UNCRC) and it is a member of the National Council for Children’s Services (NCCS). In the Home, which operates under a joint Muslim-Christian management, one can find stickers on the children’s wardrobes with texts such as ‘Children’s Rights are Human Rights’. The Home is active in four categories of children rights, the right to survival (food, clothing and shelter); non-discrimination and development (education, vocational training, and spiritual nourishment); protection (health services, prevention of harmful practices, counselling); and, participation (children clubs, sport and recreational activities).<sup>102</sup> The beneficiaries of the programmes are Muslims from the environs of Eastleigh; and unaccompanied minors from Kenya’s surrounding countries, sent there via the UNHRC, and from mainly Christian backgrounds.

Mama Fatuma Goodwill Children’s Home sets a clear example on how international human rights norms are translated and interpreted in local-urban context of Eastleigh; and therefore, on how the management of the Orphanage is ‘vernacularizing human rights’ in *Islīi*.<sup>103</sup> International human rights treaties, such as the UNHRC, the UNCRC, and the Kenyan national NCCS and Children’s Act 2001

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<sup>99</sup> Ife (2012) 76, 77.

<sup>100</sup> See <<http://mamafatumas.org/>> .

<sup>101</sup> Ibid.

<sup>102</sup> Leaflet of the Home found at the reception (16 November 2013).

<sup>103</sup> Ibhawoh (2018) 225.

'from above', are interpreted in the cross-cultural, interreligious setting of this local-urban social institution 'from below'. In the Home, human rights are 'inculturated' in Eastleigh's urban-local context. By broadening human rights to include the concept of human rights culture, the strictly legal instrument is widened by relating it to underlying spiritual beliefs, principles and religious values of the members of this FBO.

In terms of the receptor approach, through social institutions 'local texture' is given to international human rights law. According to Zwart, '[I]law does not enjoy a monopoly'.<sup>104</sup> Every society and value system can remain loyal to its own convictions and its own conceptualisation of human dignity.<sup>105</sup> Human rights practices in Eastleigh, based on notions like family, religion and doing good to others, appear to be building blocks for international human rights. As Zwart rightly states, '[w]here they exist, instead of ignoring local notions of human rights, or replacing them by Western concepts, international human rights experts should identify them, incorporate them and build on them'.<sup>106</sup> In this way, human rights culture can add socio-ethical, even moral-spiritual values to international law proper, such as 'ubuntu', 'hospitality', 'empathy', 'spiritual nourishment', and 'inner worth'.

In the context of Eastleigh's civil society, comprising of NGOs, CBOs, and FBO's, moral-spiritual values such as 'doing good to others' and religion are significant building blocks of human dignity-based human rights culture. In line with An-Na'im, religion in Eastleigh is a source of inspiration for promoting a human rights culture.<sup>107</sup> As discussed above, Maritain, Ignatieff, and Habermas, however, have preferred a more pragmatic, neutral approach to the foundation of human rights.<sup>108</sup> Van der Ven states that the UDHR is a "*begründungsoffen*", foundation-open text, leaving the document open to a multiplicity of foundations, including religious ones, 'to reach agreement so as to do what needed to be done'.<sup>109</sup> In this pragmatic vein, the best way forward, would be to agree that human dignity is key to the ongoing cross-

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<sup>104</sup> Zwart (2012) 546.

<sup>105</sup> Ibid., 552, 553.

<sup>106</sup> Zwart (2013) 13.

<sup>107</sup> An-Na'im (2011) 300.

<sup>108</sup> Witte (2012) 346; Habermas (2010) 467; Ignatieff (2009) 95.

<sup>109</sup> Van der Ven (2010) 166.

cultural and interreligious dialogue on what home-grown human rights culture entails in contexts such as that of Little Mogadishu.

#### 4. CONCLUDING REMARKS

The definition of human rights in terms of human dignity-based human rights culture introduces a localised perspective 'from below' and allows for home-grown translations of international human rights laws and other related institutions 'from above'. Human rights declarations from above and its underlying moral-spiritual values on the ground should go hand in hand. A focus on human rights culture from below can help to map concrete violations of human dignity. Human dignity is the 'linking pin' between morality and human rights as law. Human rights culture, therefore, can be translated into concrete terms at the everyday micro-level, such as the day-to-day lives and practices of Eastleigh's residents. Whereas international human rights treaties can offer the necessary overall legal framework, human rights culture actually becomes relevant in concrete cases of human rights violations on the ground.

On the one hand Eastleigh is deeply associated with social marginality and refugees, on the other hand, it represents a thriving global hub of trade. In Eastleigh a thriving human rights culture consisting of numerous national and international human rights organisations including Faith-based Organisations (FBOs) exist. Actual legal assistance and advocacy work on behalf of the refugees in particular, appear to be mainly organised by Christian and Muslim paralegals as members of human rights NGOs and FBO's. These FBOs in Eastleigh shows an implicit and explicit cross-cultural, local-urban human rights culture.

In Eastleigh, there is an identifiable localised human rights culture that 'happens' contextually and across cultural and religious lines. Here, respect for human rights culture can even offer a methodological structure for difficult but necessary cross-cultural dialogue on human rights. In the African interreligious context of 'Little Mogadishu', human dignity-based human rights culture matters. Human right norms in Eastleigh are relevant and effective when they are intelligible in local idiom, such as in the vernacular of *Islili*. In this context, human rights culture includes positive legal standards as well as moral-spiritual values.

'Vernacularisation', 'inculturation', and 'the receptor approach' of human rights 'from below' are, therefore, what is next for universal human rights after its first 70 years.

The process of universalising human rights from below may actually start in places such as Eastleigh; or in the words of Mutua, as he sets the human rights agenda for the future:

“National NGOs have an obligation to cultivate, inspire, and support the rise of small-scale NGOs at the village and town levels to focus on particularized and highly localized concerns. This is one way in which human rights can become the people’s zeitgeist [*sic*]. The most humble forums are the crucibles in which a lasting human rights culture can be grown. The lessons gained from this interpenetration – of local, national, and universal – must inform the future of standard setting and the work of rectifying institutional weaknesses in implementation.”<sup>110</sup>

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<sup>110</sup> Mutua (2016) 142, 143.